



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 17, 2007

MEMORANDUM

TO: Thomasenia P. Duncan
Acting General Counsel

THROUGH: Patrina M. Clark *pmc*
Staff Director
Margarita Maisonet *nm*
Chief Compliance Officer

FROM: Joseph F. Stoltz *JFS*
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Audit Division
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Audit Manager
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Lead Auditor

SUBJECT: Martinez for Senate (A05-18) – Referral Matters

AUDIT REFERRAL # 07-02

On April 10, 2007, the Commission approved the final audit report on Martinez for Senate. The final audit report includes the following matters that are referable:

- Finding 1 – Receipt of Contributions that Exceed Limits meets the criteria for referral to your office. Based on the documentation submitted, the committee received 186 contributions from individuals that exceeded the limit by \$313,235.
- Finding 2 – Failure to File 48-Hour Notices meets the criteria for referral

to your office.

- Finding 3 – Disclosure of Proceeds from Joint Fundraising Activity meets the criteria for referral

to your office.

Based on the above, the Audit staff suggests careful consideration should be given to the extent of resources utilized by your office to pursue these matters.

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All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Paula Nurthen or Alex Boniewicz at 694-1200.

Attachments: Finding 1 – Receipt of Contributions that Exceeds Limits
Finding 2 – Failure to File 48-Hour Notices
Finding 3 – Disclosure of Proceeds from Joint Fundraising Activity

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Finding 1. Receipt of Contributions that Exceed Limits

Summary

MFS accepted 186 contributions from individuals that exceeded the limit by \$313,235. Most of these excessive contributions resulted from improper redesignations and/or reattributions. In response to the interim audit report recommendation, MFS provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. In addition, MFS provided copies of negotiated refund checks and/or copies of refund checks prepared but not negotiated.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person. Increased contribution limits are provided for candidates facing self-financed candidates once the self-financed candidates make expenditures from their personal funds that exceed a specific amount. 2 U.S.C. §441a(a)(1)(A) and §441a(i); 11 CFR §§110.1(a) and (b) and 110.9(a).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

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Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- how the contribution was attributed; and
- the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee must either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

Martinez for Senate qualified for increased limits afforded candidates opposing self-financed opponents. MFS's limitation was increased threefold (\$6,000) on June 14, 2004 and subsequently sixfold (\$12,000) on July 16, 2004. The increased limitation period ended on August 31, 2004, the date of the primary election.

The Audit staff reviewed all contributions from individuals to determine if excessive contributions were received. The Audit staff identified 186 contributions from individuals that exceeded the limit by \$313,235. During this review, it was noted that MFS routinely redesignated contributions to another election or reattributed contributions to another contributor. However, no documentation was provided by MFS in support of these redesignations and reattributions; neither signed redesignations or reattributions, nor the contributor notifications required to take advantage of the presumptive reattribution or redesignation options discussed above.

Of the excessive contributions, \$218,628 (70%) resulted from improper presumptive redesignations and/or reattributions. The remaining excessive contributions totaling \$94,607 exceeded the limits per election cycle and could not be resolved through redesignation and/or reattribution based upon available documentation. MFS did not maintain sufficient funds in its bank accounts to make the necessary refunds.

At the exit conference, the Audit staff provided the MFS treasurer with schedules of the excessive contributions noted above. She agreed to review these schedules to determine whether she concurred with the exceptions listed and respond accordingly.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that MFS:

- Send notices to those contributors that were eligible for presumptive redesignation and/or reattribution (\$218,628) to inform those contributors how the contribution was designated and/or attributed and offer a refund of the excessive portion. Absent a request for a refund by the contributors, these notices would have obviated the need for contribution refunds or payments to the U.S. Treasury. For notices sent to contributors, MFS should have provided a copy of each notice and evidence that it was sent. Such notice must demonstrate that both the contributor and the individual to whom the contribution was reattributed were notified; and
- Provide evidence demonstrating that the remaining contributions totaling \$94,607 were not excessive. Such evidence should have included, but not be limited to, documentation that the contributions were reattributed or redesignated in a timely manner or that the excessive contributions were timely refunded; or
- Absent such evidence, refund \$94,607 to the contributors or to the U.S. Treasury and provide evidence of such refunds (copies of the front and back of negotiated refund checks); or
- If funds were not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds became available to make such refunds.

In response to the interim audit report recommendation, MFS provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. MFS also provided evidence (declaration from the treasurer) that the notices were sent to both the contributors and the individuals to whom the contributions were reattributed. For the remaining contributions totaling \$94,607, MFS provided copies of negotiated refund checks (\$57,990) and copies of refund checks prepared but not negotiated (\$36,617). Of the \$36,617, refunds totaling \$6,417 were reported. Until copies of negotiated refund checks are submitted, the \$36,617 is considered unresolved. MFS stated its intention to provide copies of the remaining negotiated refund checks once they clear the bank.

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Finding 2. Failure to File 48-Hour Notices

Summary

MFS did not file 48-hour notices for 109 contributions totaling \$162,014 prior to both the primary and general elections. In response to the interim audit report recommendation, MFS agreed that 48-hour notices were not filed for the contributions in question.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed 1,496 contributions, totaling \$2,743,379, which were greater than or equal to \$1,000 and received during the 48-hour notice filing periods of both the primary and general elections. MFS did not file 48-hour notices for 109 contributions totaling \$162,014 (\$21,500 for the primary election and \$140,514 for the general election). Most of the 48-hour notices that were not filed arose from credit card contributions (\$67,000) and contributions received by a telemarketer for MFS.

At the exit conference, MFS was provided schedules of the 48-hour notices not filed. The MFS treasurer stated that these schedules would be reviewed and any comments or corrections would be submitted in writing.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that MFS provide:

- documentation to demonstrate the contributions in question were properly included in 48-hour notices; or,
- documentation establishing the contributions were not subject to 48-hour notification; and/or,
- any written comments it considers relevant.

In response to the interim audit report recommendation, MFS indicated that they had reviewed the records and agreed that 48-hour notices were not filed for the contributions in question.

Finding 3. Disclosure of Proceeds from Joint Fundraising Activity

Summary

MFS did not properly disclose the receipt of net proceeds from four joint fundraising committees. In response to the interim audit report recommendation, MFS filed amended reports that corrected the disclosure discrepancies.

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Legal Standard

Itemization of Contributions from Joint Fundraising Efforts. Participating political committees must report joint fundraising proceeds in accordance with 11 CFR 102.17(c)(8) when such funds are received from the fundraising representative. 11 CFR §102.17(c)(3)(iii).

Each participating political committee reports its share of the net proceeds as a transfer-in from the fundraising representative and must also file a memo Schedule A (Itemized Receipts) itemizing its share of gross receipts as contributions from the original contributors to the extent required under 11 CFR 104.3(a). 11 CFR §102.17(c)(8)(i)(B).

Facts and Analysis

MFS was a participant in four joint fundraising committees. It received a total of \$319,816 in net proceeds from these committees; \$245,370 from the 2004 Joint Candidate Committee II (JCC2), \$43,329 from the Senate Majority Committee (SMC), \$16,000 from Martinez Victory Fund (MVF), and \$15,117 from the Majority Fund for America's Future (MFAF). The Audit staff's review of these transfers noted the following:

- MFS did not itemize its share of the gross receipts as contributions from the original contributors as required on memo Schedules A for transfers totaling \$260,487 from JCC2 and MFAF. MFS's records did contain the contributor information for the transfer (\$245,370) from JCC2.
- MFS did not itemize transfers totaling \$59,329 from the SMC or MVF on Schedule A, line 12, Transfers from Other Authorized Committees, as required. Instead MFS disclosed the contributors at a net amount on Schedule A, line 11a, Contributions from Individuals, without any reference as to the source of the contribution.

The Audit staff discussed this matter with MFS' treasurer at the exit conference. The treasurer stated that amendments had already been prepared to correct the deficiencies noted above.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that MFS file amended Schedules A to correctly disclose the receipt of net fundraising proceeds, along with the required memo entries.

In response to the interim audit report recommendation, MFS filed amended reports that corrected the disclosure discrepancies.

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